

**CCA Case No. 20057 – Alvin Bailey  
Investigation Report and Finding**

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**Morgan Givens  
Investigator**

**Gabriel Davis  
Director**

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## NARRATIVE SUMMARY

CCA Receipt: 24 March 2020

Complainant: Alvin Bailey

On March 22, 2020, at approximately 5:30 A.M, Mr. Alvin Bailey and several others were inside the foyer of Shelterhouse, formally, the Drop Inn Center, located at 411 Gest Street. They were asked to leave by Shelterhouse employees, but due to frigid temperatures they refused to leave when asked; consequently, the police were called. Officer Smith responded to the scene and attempted to physically remove them from the shelter foyer; Officer Smith pushed Mr. Nathaniel Davis, who fell into Mr. Bailey and caused Mr. Bailey to hit his head on the wall. When the men exited the foyer, Officer Smith pushed Mr. Davis again.

Mr. Bailey alleged Officer Smith used excessive force and failed to activate his Body Worn Camera (BWC) during their interaction.

## INVOLVED SUBJECT STATEMENTS

### **Alvin Bailey**

CCA interviewed Mr. Bailey on March 24, 2020, at 2:25 P.M. He provided the following information:

On March 22, 2020, Drop-In Center staff were putting people out of the hallway. Those seeing shelter did not leave; staff called the police. A police officer responded and told people to leave, but multiple men stated that they were not leaving. The man next to Mr. Bailey, M/B/65, Mr. Davis, turned around and put his hands around his back, complying to being arrested. Officer Smith pushed Mr. Davis and he fell into Mr. Bailey, causing Mr. Bailey to hit his head. Officer Smith used two hands to push Mr. Davis in the back, as a way to get him to leave. Mr. Davis began to leave, and Officer Smith pushed Mr. Davis over a cement sitting stone outside. Mr. Bailey went to the hospital on his own and had an X-ray done. The X-ray did not show anything broken. Nobody was arrested. The officer pulled out his taser in the process of making everyone leave. Mr. Bailey did not think the officer's BWC was on because he could not see a flashing red light on the unit.

### **Nathaniel Davis**

Mr. Davis, M/B/57, was unable to be interviewed. CCA attempted to contact him by telephone and mail at his listed address but there was no response. To date, Mr. Davis has not contacted CCA.

## INVOLVED OFFICER STATEMENTS

### **Officer Michael Smith**

Officer Smith, #P0932, M/W/47, his current assignment is District 1, and he has been a CPD member since 2007. Officer Smith was in uniform, in a marked cruiser, with BWC activated.

Officer Smith did not have a partner. CCA interviewed Officer Smith on March 16, 2021, at 6:18 A.M. He provided the following information:

On March 22, 2020, Officer Smith was working overtime and responded to a call to the Drop-In Center. He responded because all the other units were still at the station, and it would be quickest for him to respond. Officer Smith met with one of the shelter employees, who informed him that there were people refusing to leave the foyer in the cold shelter area. Officer Smith went to that area and informed the people there that they had to leave. One of the men, Mr. Davis, told Officer Smith that he will only leave if Officer Smith arrested him. Officer Smith repeatedly told him that all the men there had to leave. When Mr. Davis refused to leave, Officer Smith grabbed his coat to pull him out of the foyer. Mr. Davis grabbed a hold of Officer Smith, and Officer Smith's body cam fell off. Officer Smith pushed Mr. Davis away to create space, and Mr. Davis went outside. Officer Smith did not remember anyone being around or behind Mr. Davis when he was pushed. Once Officer Smith had created space, he drew his taser. He did not holster the taser until "at least a couple minutes later." He drew the taser as a deterrent and had no intention of discharging it. Officer Smith picked up his body cam and carried it in his hand as he followed Mr. Davis outside and repeated that he had to leave. Officer Smith tapped Mr. Davis on the shoulder, and Mr. Davis turned to face him. Mr. Davis tripped over the cement sitting stones and fell backwards to the ground. Bystanders stated that Officer Smith pushed Mr. Davis over the stone. Officer Smith told Mr. Davis to leave the property and walked him down the sidewalk. Two additional units responded and then the police officers left. Mr. Davis was the only individual with which Officer Smith remembered making contact.

#### OFFICER WITNESS STATEMENTS

##### **Officer Anthony Brucato**

Officer Anthony Brucato, #P0170, is currently assigned to District 1, and he has been a CPD member since 1990. Officer Brucato was in uniform, in a marked cruiser, and had no partner. His BWC was activated. CCA interviewed Officer Brucato on January 7, 2021, at 9:00 A.M. He provided the following information:

On 3/22/2020, Officer Brucato was dispatched to the Drop-in Center. He knew it was for disorderly conduct, but beyond that, he was uninvolved in the incident. He pulled up in the parking lot and the incident appeared to be over. He approached the other officers and told them that since the incident was over, they all should leave. Officer Brucato stated that CPD receives calls to the shelter often for a variety of reasons, including criminal trespass. He did not remember ever having to arrest anyone for trespass at the shelter before, but it was not uncommon for people to refuse to leave. Officer Brucato said that usually once asked by an officer, the people would comply and exit the shelter.

#### WITNESS STATEMENTS

##### **Witness A**

CCA interviewed Witness A on September 27, 2022 at 5:58 A.M. She provided the following information:

Witness A, F/W/37, was a staff member at Shelterhouse. Witness A worked primarily in the upstairs portion of Shelterhouse, which provides long-term services to homeless individuals (such as drug/alcohol/mental health assessments and job placement). At the time of the incident, the

downstairs component of Shelterhouse was designated a “winter shelter,” in which homeless individuals could come in between approximately 6:00pm – 6:00am; the individuals have access to a bed and bathroom facilities but no other services and may not stay beyond the allocated hours. The individuals are advised to read a document that explains each of the stipulations and must sign it before they are able to stay.

On March 22, 2020, Witness A was working the “upstairs” component of Shelterhouse when a Shelterhouse RA, Witness B, contacted her for assistance. She expressed concern there was “going to be trouble” by multiple individuals in the stairwell who refused to leave. The individuals were verbally combative and claimed because the City of Cincinnati had given the shelter a funding grant, they should be allowed to stay. One of the individuals, Witness C, removed the chain from the doors. The situation began to escalate as the individuals attempted to enter the Shelterhouse lobby and there were indications the individuals may become physically aggressive. Witness A and Witness B distanced themselves from the individual and requested assistance from CPD.

Shortly afterwards, Officer Smith arrived. After he exited his cruiser, Officer Smith spoke with Witness A and Witness B to ascertain the situation. They indicated the three individuals at the center of the situation. Officer Smith spoke with the individuals. Although Witness A did not recall the specifics of their conversation, she remembered Officer Smith directed the individuals to leave multiple times and they replied, “You can’t do this to us!” and “You can’t treat us this way.” She did not hear Officer Smith’s reply but recalled they argued. Officer Smith displayed his taser to the individuals but did not deploy it.

While speaking to the individuals, Officer Smith approached circular, concrete benches that were in front of the Shelterhouse. Officer Smith approached one of the three individuals, picked him up by his winter coat with both hands and “slammed” him down. Witness A did not recall what caused Officer Smith’s actions, though noted the individual did not appear to have a weapon. The individual was not injured. Officer Smith’s actions appeared to escalate the behavior of those nearby, but they calmed down when a second cruiser arrived shortly afterwards. Officer Smith told the Shelterhouse staff, “You’re on your own here,” before he left and did not resolve the situation. Witness A noted that staff members call CPD for assistance as a “last resort” because the officers show up with an “attitude” due to the “stigma” of Shelterhouse’s clientele, appear “defensive,” and rarely address the Shelterhouse’s concerns.

Witness A did not have any prior contact or knowledge of the individuals involved in the incident except for Witness C, who had a history of throwing objects at the Shelterhouse’s windows and vandalizing staff vehicles.

## **Witness B**

Witness B, F/W, was identified as Shelterhouse staff member who witnessed the incident. CCA attempted to reach Witness B through the Shelterhouse; as her information could not be released by staff members, a message was left. To date, Witness B has not contacted CCA.

## **Witness C**

Witness C, M/B, provided a written statement to CCA: "The police assaulted Nathaniel Davis and intentionally stepped on Witness C's feet and pulled out a stun gun and intimidated us for no apparent reason. Nathaniel Davis then walked out the door and Officer Smith then ran and pushed him over a cement stump and hurt Nathaniel's knee, back and finger, and traumatized him."

Witness C was unable to be contacted for a full interview as Witness C did not provide any identifying or contact information.

## **SIGNIFICANT DISCREPANCIES AND CLARIFICATIONS**

There is a discrepancy regarding how Mr. Davis fell, after he was removed from the enclosed area:

Officer Smith stated that after Mr. Davis was removed from the enclosed area, Mr. Davis tripped over an object which caused him to fall.

Mr. Bailey stated that Mr. Davis fell because he was pushed by Officer Smith.

Witness C wrote, "Nathaniel Davis then walked out of the door and [Officer Smith] then ran and pushed him over a cement stump"

Regarding the entire incident, Witness A stated that Officer Smith picked up a homeless individual and "slammed" him down.

Neither BWC or CCTV footage provided an angle to confirm nor refute the discrepancy solely by video footage.

## **EVIDENCE**

CCA reviewed all CPD-related forms, documents, and reports relevant to the incident with the complainant, including BWC and DVR footages, Internal Investigation Section (IIS) report and Computer Aided Dispatch (CAD) report.

## **BWC**

### **Officer Michael Smith**

The events recorded by Officer Smith's BWC occurred on March 22, 2020, starting at 6:37 A.M, according to the recording's timestamp. A review of that recording reveals the following:

Officer Smith exited his cruiser. He first approached the front of the center and asked the workers “he still here?” The workers described the man and then showed Officer Smith to the foyer.

Officer Smith opened the door and addressed the four men inside by motioning them out and said, “come on” and “you gotta go.” The men inside responded that they were not leaving because it was cold, and they were in a homeless shelter. Officer Smith informed them that the shelter was private property. Two of the men exited the hallway, while they asked Officer Smith why they cannot be inside. Officer Smith responded that the workers are the bosses and if they ask people to leave, they have to leave.

Officer Smith told one of the men remaining inside, Mr. Davis, to “come on” while he motioned with his hand. The man responded, “take me to jail then” and refused to leave. Officer Smith said, “get out.” Officer Smith entered the hallway and grabbed Mr. Davis’s jacket. Mr. Davis grabbed onto Officer Smith. Officer Smith’s camera was knocked to the floor. Officer Smith tried to push Mr. Davis out of the door, but Mr. Davis did not go outside until Officer Smith pushed him toward the door and the other men outside tried to get Mr. Davis to leave. Officer Smith drew his taser and told Mr. Davis “you better get moving.” Another man whose identity CCA has been unable to confirm (hereinafter referred to as “Unidentified Witness 1”)<sup>1</sup> told Officer Smith that “I’ll get my stuff.”

Officer Smith picked up his camera and walked outside. He repeatedly told Mr. Davis to “get moving” while reattaching his camera. He argued with Mr. Davis and walked him down the sidewalk. Mr. Davis walked away, and Officer Smith announced “if you need to go, go” to the rest of the men. Unidentified Witness 1 refused to leave, and Officer Smith said, “you and I had a conversation last night” and then “go” when Unidentified Witness 1 continued to stand. Officer Smith argued with other men about whether he pushed Mr. Davis down. Unidentified Witness 1 told Officer Smith that he was leaving and walked away limping.

The workers informed Officer Smith that Unidentified Witness 1 had the chain to the door, and Officer Smith requested the chain back, but Unidentified Witness 1 continued walking. Officer Smith talked to the workers and some other men for a few minutes. Officer Smith left the shelter and deactivated his body cam.

### **Officer Anthony Brucato**

The events recorded by Officer Brucato’s BWC occurred on March 22, 2020, starting at 6:49 A.M, according to the recording’s timestamp. A review of that recording reveals the following:

Officer Brucato exited his cruiser. He listened to the other two officers speaking with some men from the shelter. The other officer said that they can leave. Officer Brucato said “if he’s out, let’s go,” and then deactivated his body cam.

### **Video Footage Provided by the Shelter**

The events recorded by Shelterhouse surveillance footage occurred on March 22, 2020, starting at 6:39 A.M, according to the recording’s timestamp. A review of that recording reveals the following:

Officer Smith opened the door and told the men to leave. None complied, and he waved again. Two of the men exited the hallway. Mr. Davis approached Officer Smith and the two talked for a few seconds in the doorway. Mr. Davis went back into the hallway and Officer Smith followed.

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<sup>1</sup> Where there is some indication from the other evidence that Unidentified Witness 1 is either Witness C or Alvin Bailey, CCA is unable to conclusively distinguish between the two men when reviewing the video, and no witness viewed the video and made a positive identification of Unidentified Witness 1.

Officer Smith grabbed Mr. Davis with both hands by the coat and lead him towards the open door. Mr. Davis struggled and did not end up outside, but in the struggle was pushed up against the left side wall. Officer Smith still had not let go of Mr. Davis's coat. Officer Smith pushed Mr. Davis with both hands outside. Mr. Davis and his friends were standing in the doorway, and Officer Smith drew his TASER but did not point it at anybody. The men backed away from the doorway and Officer Smith picked up his BWC and walked outside. Officer Smith had hands on Mr. Davis for 15 seconds.

## AUTHORITIES

### I. Manual of Rules and Regulations (in part)

#### Section One – Failure of Good Behavior

##### 1.6

- A. Members of the Department shall always be civil, orderly, and courteous in dealing with the public, subordinates, superiors, and associates.

### II. CPD Procedure Manual (in part)

#### § 12.540 Body Worn Camera System

Officers are required to activate their BWC system during all law enforcement-related encounters and activities as defined in this procedure. Officers will deactivate the BWC system only at the conclusion of the event or with supervisor approval.

#### Procedure:

- 5. Officers will **not** use the BWC to record the following:
  - a. Confidential informants or undercover officers
  - b. Department personnel during routine, non-enforcement related activities, unless recording is required by a court order or is authorized as part of an administrative or criminal investigation
  - c. In any place where there is a reasonable expectation of privacy except during an active incident
  - d. In any detention facility or hospital facility except during an active incident (e.g. disorderly person)
  - e. During discussions/briefs regarding tactics and/or strategies

#### § 12.545 Use of Force

#### Definitions:

**Actively Resisting Arrest** – When the subject is making physically evasive movements to **defeat the officer's attempt at control**, including fleeing, bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

**De-escalation** – Using non-confrontational verbal skills, empathy, and active listening to stabilize a person in crisis. De-escalation may also incorporate the use of additional time, distance, and resources as well as persuasion, command presence, repositioning, and warnings, to reduce the intensity of a potentially violent situation to decrease the potential need to use force

**Escorting** – The use of light pressure to guide a person or keep a person in place.

**Force** – Any physical strike, instrumental contact with a person, or any significant physical contact that restricts movement of a person. The term includes, but is not limited to, the use of firearms, TASERs, chemical irritant, choke holds or hard hands, the taking of a subject to the ground, or the deployment of a canine. The term does not include escorting or handcuffing a person with no or minimal resistance.

**Hard Hands** – The use of physical pressure to force a person against an object or the ground, use of physical strength or skill that causes pain or leaves a mark, leverage displacement, joint manipulation, pain compliance, and pressure point control tactics.

### **Policy:**

The Cincinnati Police Department recognizes the value of all human life and is committed to respecting the Constitutional rights and dignity of every individual. Officers shall act within the boundaries of the United States Constitution, the laws and constitution of the state of Ohio, the charter and ordinances of the city of Cincinnati, this use of force procedure, and all other relevant CPD procedures, policies, practices and training.

A police officer's right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion, or threat thereof, to effect it. Determining whether the force used to affect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake. The decision to use force "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. ... (T)he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight...the question is whether the officers' actions are objectively reasonable' in light of the facts and circumstances confronting them" (Graham v. Connor, 1989).

A number of factors may be taken into consideration to evaluate whether an officer has used objectively reasonable force. These factors include, but are not limited to:

- The conduct of the person being confronted as reasonably perceived by the officer at the time, including the level of threat or resistance presented by the subject.
- The officer's and subject's factors, including but not limited to size, age, relative strength, skill level, injuries sustained, level of exhaustion or fatigue and the number of officers versus subjects.
- The influence of drugs or alcohol and the subject's mental capacity, if known.
- The proximity of weapons.
- The distance between the officer and the subject.
- The degree to which the subject has been effectively restrained and his / her ability to resist despite being restrained.
- Time and circumstances permitting, the availability of other options (resources that are reasonably available to the officer under the circumstances).
- The seriousness of the suspected offense or reason for the contact with the individual.
- The training and experience of the officer.
- The potential for injury to citizens, officers and suspects.

- Whether the conduct of the individual being confronted reasonably appears to pose an imminent threat to the officers or others.
- The prior knowledge of the subject's propensity for violence.
- Any other exigent circumstance of special knowledge.

Courtesy in all public contacts encourages understanding and cooperation. The most desirable method for effecting an arrest is where a suspect complies with clear and concise directions given by an officer.

Whenever possible, de-escalation techniques shall be employed to gain voluntary compliance by a subject. Officers shall use only the level of force that is objectively reasonable to effect an arrest or while protecting the safety of the officer and others.

Officers should attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety. The suspect should be allowed to submit to arrest before force is used, unless this causes unnecessary danger to the officer or others.

**When officers have a right to make an arrest, they may use whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more. Just as officers must be prepared to respond appropriately to rising levels of resistance, they must likewise be prepared to promptly de-escalate the use of force as the subject de-escalates or comes under police control.**

Officers must avoid using unnecessary violence. Their privilege to use force is not limited to that amount of force necessary to protect themselves or others but extends to that amount reasonably necessary to enable them to effect the arrest of an **actively resistant** subject. Force situations often do not allow for an ordinal progression up a continuum of force and officers must be ready to escalate or de-escalate as the situation evolves.

An officer has a duty to stop, prevent and report the use of excessive force by another officer. Officers who use excessive force will be subject to discipline, possible criminal prosecution, and/or civil liability.

All members have a duty to ensure all use of force incidents and any citizen allegation of excessive force are reported to the Police Department. Whenever employees use any type of force or confront resistance that results in an injury or complaint of injury to a citizen; or have knowledge of any of the above; or are aware of a citizen complaint of excessive force, they will promptly notify a supervisor. The supervisor or command officer investigating the incident must be of at least the next higher rank than the officer(s) who used force. The only exception is when a lieutenant uses force and there is no captain or above working, but an acting Night Chief is available. In this case, the acting Night Chief can conduct the investigation.

## **Force Options**

- Officer presence
- Verbal skills
- CEW/Chemical irritant
- Escort techniques
- Balance displacement
- Hard hands (pressure points/strikes)
- Monadnock PR-24
- PepperBall launcher (non-lethal)
- Beanbag shotgun (Less than lethal)

- 40mm foam round (Less than lethal)
- Monadnock Auto-Lock baton
- Deadly force

## ANALYSIS

### *Allegation #1: Excessive Force*

In investigating Mr. Bailey's complaint that Officer Smith used excessive force, CCA examined multiple aspects of Officer Smith's conduct on March 24, 2020, including actions he took to eject persons from the Shelterhouse building, his withdrawal of his TASER, and allegations of conduct occurring outside of the Shelterhouse. The evidence establishes the following:

Officer Smith responded to a call at a homeless shelter where several individuals refused to leave. Officer Smith initially addressed the individuals by giving verbal commands for them to leave repeatedly. Mr. Davis did not respond to verbal commands and told Officer Smith to arrest him, stating that he was homeless, it was cold, and he had nowhere to go if he departed Shelterhouse. Officer Smith grabbed Mr. Davis' jacket and attempted to push him outside with both hands, at one point pushing Mr. Davis against a wall. Officer Smith and Mr. Davis struggled for several seconds until Mr. Davis was pushed outside. In the struggle, Officer Smith's BWC was knocked off his chest and onto the floor, largely obscuring any view of what happened. After Mr. Davis was outside, Officer Smith drew his TASER as a deterrent, but never discharged it.

CPD Procedure §12.545 Use of Force allows officers to use "whatever force is reasonably necessary to apprehend the offender or effect the arrest and no more." The policy incorporates the legal standard for use of force, which provides that "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" ...the question is whether the officers' actions are '*objectively reasonable*' in light of the facts and circumstances" facing the officer. See Procedure §12.545 (citing *Graham v. Conner*) (emphasis added).

CPD Procedure §12.545 Use of Force has a list of non-exhaustive factors to consider when evaluating whether the force used is objectively reasonable, which includes, among others, the conduct of the confronted person (including the level of threat or resistance), and the availability of other options.

In addition, the policy requires officers to use de-escalation methods "whenever possible" and requires that officers "attempt to achieve control through advice, delay, warnings, and/or persuasion when confronted with a situation where control is required to effect an arrest or protect the public's safety."

In this case, Mr. Davis was upset at being asked to leave the shelter, as it was cold, and he had nowhere to go. He told Officer Smith to arrest him and was prepared to comply. Mr. Davis was not behaving violently; however, he was not cooperating with verbal commands. CPD's use of force continuum (which presents force options available to officers) certainly did not require Officer Smith to eject Mr. Davis by grabbing and pushing Mr. Davis. Officer Smith was permitted to simply "escort" Mr. Davis from the building ("escorting" in this case being defined by CPD policy as the "use of light pressure to guide a person or keep a person in place.") However, officers are allowed to progress up the force continuum as is objectively reasonable, without first attempting lesser degrees of force. Here, Mr. Davis had made it clear he would not cooperate with verbal commands to exit the building, Mr. Davis did not have the permission of Shelterhouse staff to remain in the building, and Mr. Davis told the officer to arrest him. Therefore, CCA determined

Officer Smith's use of physical force to remove Mr. Davis from the building was objectively reasonable and within CPD policy, procedure, and training.

With respect to his TASER withdrawal, Officer Smith stated in his interview that he drew it for compliance without the intent to use it. CPD Procedure allows the drawing of a TASER under circumstances where using the TASER would be permitted. CCA concluded that Officer Smith's display of his TASER was within CPD policies and training.

Nevertheless, while CCA has sufficient facts to assess the force used to remove Mr. Davis from the building and assess Officer Smith's display of a TASER, other aspects of the excessive force allegation against Officer Smith are more difficult to resolve. For instance, Mr. Bailey alleged that Officer Smith improperly pushed Mr. Davis over a cement stump outside the homeless center. Witness A stated that she witnessed Officer Smith pick up and "slam" a man to the ground. To be sure, Officer Smith denied those allegations and stated in his interview that Mr. Davis tripped while walking backwards. However, CCA reviewed all evidence from the incident and did not have enough facts to make a conclusion as to these specific assertions due to the lack of corroborated witness statements or other credible evidence such as video of the building's exterior. Officer Smith's BWC was knocked to the ground during the use of force, and as such, it does not conclusively answer the allegations against him. Therefore, CCA ultimately could not make a determination as to the excessive force allegation against Officer Smith.

#### *Allegation #2: Improper Procedure (BWC)*

Mr. Bailey alleged that Officer Smith's BWC was not activated during the incident at the homeless shelter. CCA reviewed Officer Smith's BWC which revealed that the recording device was activated for the duration of the incident. Therefore, this allegation is unfounded.

#### *Allegation #3 (Collateral Allegation): Improper Procedure (Failure to Report Use of Force)*

Officer Smith did not report the use of force that he engaged in on his call for service to Shelterhouse. CPD was made aware of the use of force by complaints, which prompted them to further investigate the excessive force allegation. According to CPD documents, after reading CPD Procedure §12.545, Officer Smith did not believe his actions constituted a use of force and consequently did not fill out the proper paperwork or report the incident. Despite what Officer Smith reportedly believed, CCA determined that his conduct met the definition of "force" under CPD's policies. Procedure §12.545 defines "force" as "[a]ny physical strike, instrumental contact with a person, or any significant physical contact *that restricts movement of a person*," and it also defines a "hard hands" use of force as "[t]he use of physical pressure *to force a person against an object or the ground*" (emphasis added). Under a plain reading of these definitions, Officer Smith's use of his hands to grab and push Mr. Davis easily qualifies as "force."

CPD Policy 12.545 states, "Whenever employees use any type of force; or confront resistance that results in an injury or complaint of injury to a citizen; or have knowledge of any of the above; or are aware of a citizen complaint of excessive force, they will promptly notify a supervisor." Had a citizen complaint not been filed, it is possible that neither CPD nor CCA would have ever become aware of the incident. CCA found that Officer Smith's failure to report his use of force to a supervisor was not within CPD policy, procedure or training.

## FINDINGS

### Original Allegations

**Officer Michael Smith**

**Excessive Force** - There are insufficient facts to determine whether the alleged misconduct actually occurred. **NOT SUSTAINED**

**Improper Procedure (BWC)** - There are no facts to support the incident complained of actually occurred. **UNFOUNDED**

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### Collateral Allegations

**Officer Michael Smith**

**Improper Procedure (Failure to report Use of Force)** - The allegation is supported by sufficient evidence to determine that the incident did occur, and the actions of the officer were improper. **SUSTAINED**

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Morgan Givens, Investigator

12/29/2021  
Date

  
Gabriel Davis, Director

12/29/2021  
Date

**PREVIOUS  
CONTACTS AND  
COMMENDATIONS**

**Officer Michael Smith**

**Previous Contacts with CCA**

Officer Smith has had no contacts with CCA in the past three years.

**Previous Contacts with IIS**

CCA is unaware of any additional previous contact by Michael Smith with IIS in the past three years.

**Commendations**

Officer Smith received one commendation in the past three years.

<b>Date</b>	<b>Source of Commendation Received</b>
2/25/2018	Civilian